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Abraham Hershkovitz
Signature

To: ATTN: Office of Petitions,
Cliff Congo

From: Abe Hershkovitz
Reg. No. 45,294

Fax: 703-872-9306

Date: February 25, 2005

Phone: 571-272-3207

Pages: 25

Re: Second Supplemental Petition filed in U.S. Patent Application 10/709,329; Our Ref: J1803

☒ **Urgent** ☒ **For Review** ☐ **Please Comment** ☐ **Please Reply** ☐ **Please Recycle**

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Dear Mr. Congo:

In accordance with our telephone conversations and as you suggested in your e-mail, please find attached a Second Supplement to our Petition.

If you have any questions regarding this matter, please do not hesitate to call.

Very truly yours,

Abe Hershkovitz

Attachment: Second Supplement to Petition, including Exhibits A-E

Docket No.: 20107/1200838-US1
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Earl ROTMAN et al.

Confirmation No. 3328

Serial No.: 10/709,329

Group Art Unit: 3628

Filed: April 28, 2004

Examiner: Nga B. Nguyen

For: SYSTEM AND METHOD FOR CREATING TRADEABLE FINANCIAL UNITS

SECOND SUPPLEMENT TO PETITION FOR FILING DATE

MS Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

The Applicant in the above-identified patent application has petitioned on December 23, 2004, the United States Patent and Trademark Office to grant a filing date of April 28, 2004. This paper supplements the December 23rd Petition by providing further documentation and history on the electronic Acknowledgement Receipts that have been provided by the U.S. Patent and Trademark Office ("USPTO") in connection with electronic filings of applications performed by Darby & Darby, legal representative for Serial No. 10/709,329 (the "CIRC" application).

The Commissioner is hereby authorized to charge any additional fees deemed required in connection with this Second Supplemental Petition or to credit any overpayment to Deposit Account No. 04-0100.

Initially, Applicants wish to note that the experiences, comments below, and evidence in support of Darby & Darby's understanding is based on the use of the IPTAS software package

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developed by AutoDocs, LLC ("IPDAS"), an approved software vendor of the USPTO, at least with regard to such electronic filings. There are differences in the content and approach between IPDAS and EPAVE/PASAT, and the USPTO must rule on this Petition in light of the use of IPDAS, as the USPTO had endorsed the IPDAS product when these filings were made.¹

FACTS

The CIBC application was filed electronically using IPDAS on April 28, 2004. The Acknowledgement Receipt confirming files transmitted to the USPTO is attached as Exhibit A. The Acknowledgement Receipt states that the submission was "successfully submitted." The Acknowledgement Receipt cryptically lists a number of files that are enigmatically identified as being part of the "application-body."

At that time, the IPDAS software package in use at Darby & Darby required attachment of drawings within the application body.

Prior to submitting the CIBC application, Darby & Darby had used a later version of IPDAS to electronically file other cases. Attached as Exhibit B is a first example of an Acknowledgement Receipt received when using IPDAS to electronically file a case. That Acknowledgement Receipt states that the submission was "successfully submitted" and lists a number of files that are enigmatically identified as being part of the "application-body." Attached as Exhibit C is a second example of an Acknowledgement Receipt received when using IPDAS to electronically file a case. That Acknowledgement Receipt also states that the submission was "successfully submitted" and lists a number of files that are enigmatically identified as being part of the "application-body." From Secure PAIR we are certain that both of those cases have drawings in them, and in comparison to Exhibit A, there is no basis to determine why the USPTO does not have the drawings that were attached to the electronic submission associated with the Acknowledgement Receipt of Exhibit A.

¹ We understand that the USPTO has not renewed its contract with AutoDocs and that while IPDAS can continue to be used for electronic filings, it is not at this time an approved vendor. We have no further information as to the reasons for this development, but stress that the filing in question was made while IPDAS/AutoDocs had an approved status.

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We are informed that AutoDocs has not been informed of any irregularities of this kind relating to the upgrade between the two versions of the IPDAS software program that Darby & Darby used.

In the time frame leading up to the filing of the CIBC application, Darby & Darby had no basis to presume that drawings in any given electronically filed case would be anything other than "successfully received" by the Patent Office. Indeed, Darby & Darby's experience in this regard is quite to the contrary. A review of the Acknowledgement Receipt attached at Exhibit A would not illuminate any error in electronic file transfer to the USPTO in the electronic filing of the CIBC application.

Moreover, Exhibit A included only one warning, namely, that the submission does not include at least one declaration, and no warning regarding the USPTO's failure to process drawing sheets which had been attached at Darby & Darby, as averred to on petitions that have been submitted to the USPTO. Quite the opposite, the USPTO advises:

*Submission was successfully submitted- Even if Informational
or Warning Messages appear below, please do not resubmit
this application.*

Further, the Acknowledgement Receipt delineates that the declaration was there among the papers, because at that time IPDAS transmitted that portion of the electronic filing as a separate field.

We are informed that IPDAS has, in response to customer inquiries, changed the way in which drawings are attached to electronic applications. As a result of this change, the information communicated back from the USPTO is more specific, and permits identification of drawing sheets as ".tif" files with a "D" designation in its name. Darby & Darby, having been chilled by the experience noted above, has since this change in the IPDAS software program only received more detailed receipts in connection with republication requests (see exemplar attached at Exhibit D). AutoDocs, however, has received such detailed receipts using this same version of IPDAS in

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connection with their own electronic filings of applications, and we attach at **Exhibit E** an exemplary receipt that was provided to us by AutoDocs. Thus, although the Acknowledgement remains cryptic in its details, it has only been since the IPDAS software program changed its manner of attaching drawings that this information could have been available to Darby & Darby for review.

At all times, as we presently understand the Electronic Filing System, the USPTO provides information in the Acknowledgement Receipts on electronic filings that are related directly to the structure and number of files are conveyed to the USPTO. This is not a matter that is within the control of Darby & Darby. Rather, in good faith and quite reasonably, Darby & Darby has relied upon approved USPTO vendors such as AutoDocs and its IPDAS product for effective electronic filing transmissions.

CONCLUSION

Given at least the following circumstances:

1. Affirmative statements by the USPTO on the Acknowledgement receipt of **Exhibit A** that Darby & Darby's electronic filing of the CIBC application was "successfully received";
2. Darby & Darby's prior success in electronically filing applications as evidenced by **Exhibits B and C** which preceded the case in question;
3. Darby & Darby's reliance in good faith upon the IPDAS software product; and
4. The USPTO's endorsement of the IPDAS software product as an approved software product for use in connection with electronic filings such as these,

there can be absolutely no basis to question at the time of filing the present application that Darby & Darby had any reason to believe that any portion of the application was missing, let alone to instill a belief that none of the drawing sheets had been successfully received.

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I declare that all statements made herein of my own knowledge are true, and that all statements made on information and belief are believed to be true. I further declare that these statements are made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment or both, under Section 1001 of Title 18 of the United States code, and that such willful false statements may jeopardize the validity of the instant application or of any patent issued thereupon.

Dated: February 10, 2005

Respectfully submitted,

By 

David Leason

Registration No.: 36,195

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Attorneys/Agents For Applicant

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